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January 17, 2012

Federal Election Commission
999 E. Street, N.W.
Washington, DC 20463

Attn: Jeff S. Jordan, Supervisory Attorney
Complaints Examination & Legal Administration

RE: MUR 6520

Dear Mr. Jordan:

This letter is in response to yours dated December 28, 2011 and received on January 3, 2012 addressed to Sandra J. Carroll, Director, Berkshire County Board of Realtors® ("Board"). I enclose a Statement of Designation of Counsel in which Ms. Carroll, (Title) of the Board, designates me as counsel to the Board in this matter.

The Complainant asserts that in order to succeed in her business activities it is "imperative" for complainant to be "in the MLS system," and that she is required to be a Realtor® (a member of the Board and the National Association of Realtors®¹ (NAR)) to join the local MLS system. (Complaint ¶¶2-3, p. 1). The complaint further alleges that NAR increased membership dues by \$40 per year in 2012, and that such "money would be allocated for the DIRECT support of candidates." (Complaint ¶4, p. 2). The complaint also alleges that the membership did not support this change but the "voting directors forced this initiative through." (Id.) Finally, the complaint asks whether "[B]y REQUIRING this dues money which will all go to lobbying and politics ...have the Realtors® violated any federal regulations?" (Complaint ¶8, p. 2).

The Board acknowledges that dues for Board and NAR membership were increased by \$40 beginning in 2012. The Board also acknowledges that NAR has indicated that it intends to use a portion of dues it collects from members for dues for calendar year 2012, including some

¹ The Board is an incorporated membership organization, incorporated under Massachusetts General Laws and exempt from federal income tax pursuant to Section 501(c)(6) of the Internal Revenue Code. NAR is also an incorporated membership organization, incorporated under the General Not For Profit Corporation Act of Illinois and exempt from federal income tax pursuant to Section 501(c)(6) of the Internal Revenue Code.

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or all of the \$40 increase, for lobbying and political activity. For several reasons described below, however, the complaint fails to allege that the Board has engaged in any conduct that violates the Federal Election Campaign Act ("Act"). Accordingly, I respectfully request that the complaint be dismissed.

First, the complaint fails to allege a violation of the Act by the Board because it refers only to *prospective* activity by NAR, rather than conduct that is occurring or that has already occurred. ("I understand that NAR will collect millions of dollars and can come into federal, state and local elections and will have the ability to pay for ads and other items that will influence the federal, state and local elections." Complaint, ¶7, emphasis added.) Thus, by definition, no violation is alleged because the activity that Complainant suggests is or may violate the Act has not yet occurred.

Second, the complaint alleges only that the Board "will be collecting ...dues money for NAR...." and "passing this money along to the National Group." Thus, the complaint acknowledges on its face that it alleges only that NAR, and not the Board, may use the monies collected from members (by the Board) for activities that Complainant asserts will violate the Act. For this reason as well, the complaint fails to allege a violation of the Act by the Board because the only allegedly unlawful conduct described is that to be conducted by another party, NAR.

Third, and perhaps most fundamentally, the Act does not prohibit NAR from engaging in the activities for which the complaint alleges NAR intends to use 2012 member dues payments (treasury monies) collected by the Board and "passed along" to NAR. The complaint alleges, for example, that NAR "will have the ability to pay for ads and other items that will influence the federal, state and local elections." (Complaint, ¶7). Simply put, the Act does not apply to such uses by NAR of dues/treasury monies in connection with state and local candidates, and with respect to federal candidates NAR's use of such monies in support of candidates for federal office is permitted by *Citizens United v. Federal Election Commission*, United State Supreme Court Decision (2010), funds

As described in the affidavit of Timothy Ryan, Managing Director & Chief of Staff to Walter J. Witek for NAR, filed in connection with NAR's response to this complaint (a copy of which is included here for your convenience), NAR is keenly aware of, and in all respects complies with, the Act's limitations on use of treasury funds by a corporation in connection with federal elections. All lobbying and political activities for which NAR intends to use treasury monies, including those funds provided pursuant to the \$40 increase in member dues for 2012, will be those for which the use of NAR treasury funds is not prohibited by the Act. Such activities include, for example, directly lobbying of members of Congress or state or local legislative bodies, or representatives of executive or administrative agencies of federal, state, or local governments, or communications to the general public regarding legislative and similar issues of concern to the Board, NAR, or their members. Such activities may also include political activities related to the election of candidates for local or state office, administrative support for the establishment, operation, and solicitation of contributions by NAR members to the Realtors® Political Action Committee, NAR's separate segregated fund which is registered with and reports to the Commission pursuant to the Act, communications to members of NAR

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regarding expressly identified candidates for local, state, federal office, or "independent expenditures" as defined in the Act, 2 U.S.C. §431(17), and permitted to be made by corporations pursuant to the opinion of the Supreme Court in *Citizens United v. FEC*, 558, United State Supreme Court Decision (2010). In particular, but in contradiction to Complainants claim, the activities for which NAR plans to use 2012 dues money received by NAR will not, at any time, include direct or indirect contributions to federal candidates or their campaign committees, or any other federal political committees. See Ryan Affidavit ¶5. Moreover, the complaint does not provide any facts alleging otherwise.

Finally, the complaint also includes various other general inferences that conduct by the Board or NAR are unlawful. These include the suggestion that the "initiative" to "transform our Trade Association into (a) Political Lobbying and Campaign Contributing Group" was strongly opposed by the membership but "forced ... through" by the voting directors; that "in order to access the MLS in Berkshire County (she) must be a member of this Political Group" and that "such a regulation of membership ... in order for (her) to conduct (her) business" is "a form of extortion;" and that by "requiring dues money to be sued for lobbying and politics... the 'Realtors' (may) have violated federal regulations." The Board respectfully suggests that such claims merely reflect the lawful use of membership association dues for political and lobbying purposes, where such dues are required as a condition of membership and a prerequisite to participation in benefits offered by the association. Moreover, inasmuch as membership dues payments are not used by the Board of NAR for any purposes prohibited by the Act, as described above, such requirements are in any event outside the scope of conduct and activities regulated by the Act

Accordingly, for the reasons set forth above, we respectfully request on behalf of the Board that the staff recognize and determine that the complaint in this matter does not allege any violation of the Act by the Board and dismiss the matter without further action. To the extent the staff deems it appropriate for the Commission to address the complaint we urge, for the same reasons, that the Commission staff take no action against the Board and that the complaint be dismissed without further action.

Very truly yours,



Michael J. Shepard

MJS/sau
Enclosures



FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20483

STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Entity/Treasurer.
FAX (202) 210-3928

MUR # 6520

NAME OF COUNSEL: Michael J. Shepard, Massachusetts BBO #457620

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The above named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

1/17/12

Date:

Sandra J. Carroll

Respondent/Agent Signature

Sandra J. Carroll

Chief Executive Officer

Title/Treasurer/Chairman/Owner

NAMED RESPONDENT: Berkshire County Board of Realtors, Inc.

MAILING ADDRESS: 99 West Street, Suite 200

(Please Print)

Pittsfield, MA 01201

TELEPHONE: HOME

BUSINESS (413) 448-2852

EMAIL: Sandy@BerkshireRealtors.org

Information being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 4370a (52)(a) apply. This section prohibits making publicly any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

Rev. 2008